

NOT TO BE PUBLISHED

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re NICHOLAS A., a Person Coming
Under the Juvenile Court Law.

SACRAMENTO COUNTY DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

SALINA V.,

Defendant and Appellant.

C040745

(Super. Ct. No. JD216309)

Appellant, the mother of the minor, appeals from the order of the juvenile court terminating her parental rights. (Welf. & Inst. Code, §§ 366.26, 395.)¹ Appellant's sole contention is that there was insufficient evidence that the minor was adoptable. She argues that evidence of a prospective adoptive family for a seemingly unadoptable child is insufficient to

¹ Unless otherwise designated, all further statutory references are to the Welfare and Institutions Code.

support a finding of likely adoptability. We conclude that the evidence in this case of several families interested in the adoption of this young, healthy minor and of a qualified foster family committed to adopting him must surely be sufficient evidence that the minor is likely to be adopted within the meaning of section 366.26, subdivision (c)(1). We shall therefore affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

In January 2001, a dependency petition was filed concerning the nearly four-year-old minor and his half brother. The petition was based on appellant's substance abuse and psychiatric problems, her failure to participate in services, and her engaging in domestic violence in the minors' presence, which led to the stabbing of the father.

In February 2001, the petition was sustained, and appellant was granted reunification services, including domestic violence counseling.

In May, appellant completed a domestic violence program. But in July 2001, appellant was incarcerated for fatally stabbing the minor's father. Consequently, the juvenile court terminated appellant's reunification services and set the minor's matter for a hearing pursuant to section 366.26 to select and implement a permanent plan.

The foster parents, who had cared for the minor since shortly after his removal, were granted de facto parent status.

According to a status report dated August 2001, they were committed to providing care for the minor and were interested in adopting him. Although the minor exhibited significant emotional and behavioral problems at times, including aggressive and violent behavior toward the foster parents and their dog, his therapist opined that he was making "significant progress in therapy" and that his negative behavior had decreased.

By January 2002, the social worker reported that the minor "ha[d] made a significant attachment to the foster parents" and had made it clear that he wanted "to stay in this home forever." She described the minor as "a very bright, articulate child who appears to be age appropriate in his development." According to the social worker, the foster parents remained "very interested" in adopting the minor. In addition, several paternal relatives in Mexico expressed an interest in having the minor placed with them, and positive home evaluations were completed on them. The social worker, however, did not recommend placement of the minor with them since the child was "very attached" to his de facto parents and wanted to remain with them. Although the minor continued to exhibit some -- albeit diminishing -- aggressive behavior, the social worker assessed the minor as adoptable "as he is a young, healthy, normally developed child." She recommended termination of parental rights.

According to a subsequent letter from the minor's therapist, the minor had "dealt with his tremendous past traumas better than could be expected." The minor reported to the

therapist that he felt loved and safe with his foster parents; she opined that the minor was "as bonded to his foster parents as any child could be."

However, a psychological evaluation of the minor conducted by Dr. Lorin Frank shortly before the section 366.26 hearing diagnosed him with multiple disorders, including post-traumatic stress disorder or "the beginnings of a more pervasive psychological problem such as Manic Depressive Disorder." The evaluation assessed that although the minor saw his foster parents as his "psychological parents and primary care takers [sic]," "there [wa]s no evidence that [the minor] [wa]s developing an attachment for them." According to the evaluation, the minor would always be "a behavior management problem and high maintenance child" and was "the type of child who typically will go through a number of placement failures." The evaluation concluded: "For this reason, [the minor] may not be appropriate for adoption because of his mental health problems."

Despite this psychological evaluation, the social worker believed that the minor had developed a bond with his foster parents. The social worker's conclusion was based on her observations of the minor with the foster mother, the minor's statement that he loved his foster parents and wanted to stay with them, and the opinions of the minor's therapist and the foster care agency worker, both of whom saw the minor weekly. The social worker also noted that if the foster parents changed

their minds about adoption after reviewing the psychological evaluation, the minor's relatives in Mexico were "very willing and able" to adopt the minor. Accordingly, the social worker continued to believe that the minor was adoptable.

At the section 366.26 hearing in January 2002, the minor's attorney advised the court that Dr. Frank had indicated that although the minor was not generally adoptable, he was "specifically" adoptable.

Noting the findings in Dr. Frank's psychological evaluation that the minor had some serious disorders that could manifest themselves in the future, the juvenile court directly questioned the foster parents regarding whether they were prepared to go forward with the hearing on the minor's adoptability or preferred to have the matter continued to obtain additional information about the minor's problems. The foster father responded: "We discussed it ourselves, and we feel that we want to go forward with it. But this deal about going to the psychiatrist and stuff, we thought that that evaluation was pretty strongly stated. We would like to get like a second opinion, but I don't think it will change our mind." The foster mother stated that their relationship with the minor was "no different than that of one that we would have with our own child" and that they could not imagine their lives without the minor. She stated that even if she was given "the most negative news" about the minor, her love would not waver and she "would continue to support him in whatever way he needed."

The juvenile court noted that it had "specifically inquired of the de facto parents" and that they had indicated they were prepared to go forward and were "strongly committed" to the minor. The juvenile court then found the minor to be adoptable and terminated parental rights.

DISCUSSION

Appellant argues that "[t]he only evidence before the juvenile court on the issue of adoption" -- the social worker's report and the psychological evaluation -- "provided no clear and convincing evidence to support the juvenile court's finding that [the minor] was likely to be adopted." We disagree.

At a section 366.26 hearing, adoption is the preferred permanent plan. (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368.) "In order for the court to select and implement adoption as the permanent plan, it must find, by clear and convincing evidence, the minor will likely be adopted if parental rights are terminated." (*In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1164.)

"We review the factual basis of a termination order to determine whether the record contains substantial evidence from which a reasonable trier of fact could find a factual basis for termination by clear and convincing evidence." (*In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154.) "'All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the [order], if possible. Where there is more than one inference which can reasonably be

deduced from the facts, the appellate court is without power to substitute its deductions for those of the trier of fact'" (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.)

"The issue of adoptability posed in a section 366.26 hearing focuses on the *minor*, e.g., whether the minor's age, physical condition, and emotional state make it difficult to find a person willing to adopt the minor. [Citations.] Hence, it is not necessary that the minor already be in a potential adoptive home or that there be a proposed adoptive parent 'waiting in the wings.'" (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.)

But "a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent or by some other family." (*In re Sarah M., supra*, 22 Cal.App.4th at p. 1650.)

Moreover, "in some cases a minor who ordinarily might be considered unadoptable due to age, poor physical health, physical disability, or emotional instability is nonetheless likely to be adopted because a prospective adoptive family has been identified as willing to adopt the child. Where the social worker opines that the minor is likely to be adopted based solely on the existence of a prospective adoptive parent who is willing to adopt the minor, an inquiry may be made into whether there is any legal impediment to adoption by that parent

[citations]. In such cases, the existence of one of these legal impediments to adoption is relevant because the legal impediment would preclude the very basis upon which the social worker formed the opinion that the minor is likely to be adopted. [Citation.]” (*In re Sarah M.*, *supra*, 22 Cal.App.4th at p. 1650.)

In this case, although the minor had behavioral problems, the social worker observed that they were diminishing over time. Second, there were several families -- the foster parents and the minor’s relatives in Mexico -- who were interested in adopting him. The willingness of these families to adopt the minor was evidence that “the minor [was] likely to be adopted within a reasonable time either by the prospective adoptive parent or by some other family.” (*In re Sarah M.*, *supra*, 22 Cal.App.4th at p. 1650; accord, *In re Lukas B.*, *supra*, 79 Cal.App.4th at p. 1154.) Third, even if the foster family had been the only family identified as willing to adopt the minor in light of his behavioral problems, this was a basis for finding that the minor was likely to be adopted, provided there was no legal impediment to such an adoption (see *In re Sarah M.*, *supra*, at p. 1650) -- and there was none here.

The juvenile court did not have to credit Dr. Frank’s opinion that the minor had not developed an attachment with the foster parents. In contrast to Dr. Frank’s opinion, the social worker, therapist, and foster care agency worker all believed that the minor had developed a bond with his foster parents.

Nor did the juvenile court have to rely on Dr. Frank's generalization that the minor was "the type" of child who typically would go through a number of placement failures, in light of the evidence that the foster parents were committed to him, and he to them. Indeed, the juvenile court directly questioned the foster parents concerning their willingness to proceed with an adoption in light of the problems identified in Dr. Frank's psychological evaluation. They informed the court that they had discussed it, that they wished to proceed, and that they would remain committed to the minor, regardless of any "negative news" they might receive. This was entitled to great weight since the foster parents had been caring for the minor for a year and had first-hand experience dealing with the minor's problems. After questioning them, the court stated that the foster parents were prepared to go forward and were strongly committed to the minor. None of the parties, including appellant, sought to question the foster parents any further.

Accordingly, we find that substantial evidence supported the juvenile court's finding that the minor was adoptable.

Appellant argues that "the social worker identified no prospective adoptive families . . . except the foster parents" and that "[a] social worker's opinion that the minor [was] adoptable, standing alone, [did] not justify an adoptability finding," citing *In re Kristin W.* (1990) 222 Cal.App.3d 234, 253. To the contrary, the social worker also identified the minor's Mexican relatives as "very willing and able" to adopt

him. Second, there was more than a social worker's opinion here: The foster parents themselves gave their opinion, and the therapist and foster care agency worker reported their observations.

Further, *In re Kristen W.*, *supra*, 222 Cal.App.3d 234, is distinguishable from this case. There, the juvenile court failed to make adoptability findings (unlike this case); in that case, there might have been difficulty in placing the children were they not adopted by their foster parents (whereas here other families were interested in adoption); and the only evidence that the minors were adoptable in that case was a single, conclusory statement to that effect in the social worker's report (whereas here the adoptability of the minor by his foster family was supported by specific evidence upon which the social worker based her opinion).²

Appellant also relies on *In re Jerome D.* (2000) 84 Cal.App.4th 1200, to argue that "a desire by the caretaker to adopt is insufficient evidence of general adoptability." While

² In her reply brief, appellant cites *In re Brian P.* (2002) 99 Cal.App.4th 616, as analogous to this case. But that case is more like *In re Kristin W.*, *supra*, 222 Cal.App.3d 234. In *In re Brian P.*, the appellate court observed that the juvenile court did not have the benefit of an adoption assessment report and that no facts were presented to support the minor's adoptability, only bare conclusions in several reports that the minor was a proper subject for adoption or had good chances for adoption, similar to the bare statement in *In re Kristin W.*, *supra*, at page 253. Further, in *Brian P.*, there was no indication that the minor was already in a prospective adoptive home that was familiar with his problems.

we agree with appellant that the foster parents' desire to adopt the minor, by itself, is not necessarily sufficient evidence of the minor's "general adoptability," we do not agree that "[a] finding of adoptability cannot be based upon the willingness of the caretaker to adopt" where the record reveals no impediments to adoption by that caretaker. To the contrary, under *In re Sarah M.*, *supra*, 22 Cal.App.4th at page 1650, "a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent or by some other family."

In any event, *In re Jerome D.*, *supra*, 84 Cal.App.4th 1200, is distinguishable. There, although the juvenile court found a nearly nine-year-old minor adoptable based on the willingness of the mother's former boyfriend to adopt the minor, the appellate court found that there was not "clear and convincing" evidence of adoptability because there were various potential impediments to adoption by the former boyfriend -- including his criminal record for domestic violence and his history with Child Protective Services of emotional abuse of children -- and because the social worker had not evaluated "whether there were any approved families willing to adopt a child of his 'age, physical condition, and emotional state.'" (*Id.* at p. 1205.) The court found that under such circumstances, the former boyfriend's mere desire to adopt did not establish that the minor would be adopted by him, and there was thus insufficient

evidence of the minor's "general adoptability." (*Id.* at pp. 1205-1206.)

In contrast, in this case, unlike *In re Jerome D.*, *supra*, 84 Cal.App.4th 1200, the record reveals no comparable impediments to adoption by the foster parents. And there was evidence of relatives who were also willing and able to adopt.

Citing this court's decision in *In re Scott M.* (1993) 13 Cal.App.4th 839, 844, appellant argues that "[s]uitability for adoption means a general suitability of the child, not specific suitability of the prospective adoptive family." It is true that we ruled in that case that evidence regarding the "suitability" of a prospective adoptive parent was irrelevant at a section 366.26 hearing. But we did not rule that the *willingness* of a *qualified* family to adopt was irrelevant. Distinguishing *In re Scott M.*, we reaffirmed in *In re Sarah M.* that where the social worker forms the opinion of adoptability based on a single prospective adoptive family, any legal impediment to that adoption is relevant. (*In re Sarah M.*, *supra*, 22 Cal.App.4th at p. 1650.)

Appellant also contends that in this case, the foster father's desire for a "second opinion" about the minor was an indication that he had an "ambivalence" about adoption, thereby suggesting that the one committed family was not really ready to adopt. To the contrary, when offered the option by the court to continue the hearing to obtain more information, the foster father replied that the family wanted to go forward with the

adoption. He then noted that he wanted a second opinion because he believed that Dr. Frank's evaluation "was pretty strongly stated," but noted that a further evaluation would not change their mind. The foster mother reiterated their commitment to the minor. Accordingly, the foster father's statement that they wanted to get a second opinion, when placed in context, appears to be more a reflection that the foster parents believed that the minor's problems might not be quite as severe as indicated in the evaluation. The juvenile court could properly conclude that the foster parents were prepared to go forward with the adoption of the minor.

Finally, appellant contends that the minor's psychological problems were "'so severe as to make the court's finding of adoptability unsupported.'" In his reply, he notes that the minor's "psychological assessment predicted severe adjustment problems in the future." But contrary to appellant's assertions, the evaluation stated only that the minor is "the type of child who typically will go through a number of placement failures" and that he "*may* not be appropriate for adoption because of his mental health problems." (Italics added.) But the *possibility* expressed in the evaluation was refuted by the reality of a prospective adoptive family who had cared for the minor for an extended period of time and wanted to adopt him. According to the minor's attorney, even Dr. Frank acknowledged that the minor was "specifically adoptable."

In conclusion, evidence of families willing and legally able to adopt an emotionally troubled child -- which evidence is supported by the observations of various professionals -- supports a finding of likely adoptability. Ironically, appellant's assertion that the minor's psychological evaluation "indicated overwhelming problems for any future caretaker" is perhaps the most compelling reason for ordering a permanent plan of adoption where there fortunately exists prospective adoptive parents who know and love the minor and who are willing to make a permanent commitment to him. This may be this child's only hope for overcoming the many obstacles that may lie ahead for him. The position urged by appellant would lead to the anomalous result that a troubled child who is fortunate enough to find an appropriate and committed adoptive home -- the very type of child the law seeks to protect -- nonetheless should be deprived of the permanence and stability of adoption. We reject such reasoning.

DISPOSITION

The juvenile court's order is affirmed.

KOLKEY, J.

We concur:

SCOTLAND, P.J.

DAVIS, J.